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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Seventeenth to nineteenth periodic reports submitted by Zambia under article 9 of the Convention, due in 2009*

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Foreword

I am pleased to present Zambia's combined Seventeenth, Eighteenth and Nineteenth Periodic Report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

I wish to state that the Government of the Republic of Zambia is committed to ensuring that no person is discriminated against so as to ensure full and equal enjoyment of rights by all persons.

It is worth noting that the Government of the Republic of Zambia has been engaged in a constant review of its legislative, judicial and administrative functions with a view to placing appropriate interventions for implementing the Covenant. This Report is therefore an open and honest account of the measures that Zambia is taking to implement the Convention.

This Report was prepared through a very participatory and inclusive process. Broad consultations were undertaken and inputs from various stakeholders have been incorporated into the Report.

I am indebted to all Government Ministries and departments, and all the various stakeholders covering non state actors both local and international for their invaluable contribution to the preparation of this report.

The report hopes to inform the Committee on the Elimination of Racial Discrimination on the status of the Convention as well as to solicit comments on the way forward. It is the belief of the Government that this Report shall inspire all Ministries, Government and non governmental institutions and all residents of Zambia to uphold the principles enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination.

The Government, as usual, stands ready to receive counsel and suggestions from all and sundry on how to ensure that we as a country achieve the vision of that country that is united beyond the racial divide.

I applaud the effort and hard work put in by the team that was tasked with the responsibility of preparing this Report.

Given Lubinda, MP
Minister of Justice

Executive Summary

This Report is based on objective and reliable information of Zambia's fulfilment and implementation of the International Convention on the Elimination of All form. of Racial Discrimination (ICERD).

This Report gives an account of the normative framework in which non-discrimination is protected in Zambia. During the State party's presentation of its Sixteenth Periodic Report to the Committee on the Elimination of Racial Discrimination (hereinafter called "the Committee"), the Committee raised concerns and recommendations. This Report addresses these concerns and recommendations. It also outlines the legislative, administrative, judicial and other measures in place to ensure the fulfilment of Zambia's obligations and commitments under the ICERD.

The report was due on 5th March, 2009 and is therefore overdue by 8 years. The reporting period for the ICERD is every two (2) years. Therefore, Zambia is required to give her report every two (2) years.

The Report also gives an account of the challenges and constraints faced in the implementation of the ICERD on the Elimination of All Forms of Racial Discrimination. It highlights the key national priorities, initiatives and commitments which Zambia intends to use to overcome the key challenges and constraints. The Report emphasises Zambia's continuous efforts and commitments towards strengthening the Elimination of all forms of Racial Discrimination.

The Committee is invited to note that the responsibility of preparing State Reports in Zambia lies with the Ministry of Justice. The process of preparing the national Report commenced with an initial stakeholders workshop which was held in Lusaka by the Ministry of Justice, intended to collect information and views for the Report.

This was followed by consultative workshops whose objectives were to familiarise the participants with the obligations under the Convention and to gather information on the implementation of elimination of all forms of racial discrimination in Zambia for inclusion in the national Report. The participants and stakeholders who were consulted in this process were drawn from Government institutions, Civil Society Organisations and the Human Rights Commission.

Acronyms

GIZ	Gesellschaft fur Internationale Zusammenarbeit
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
LSU	Legal Service Units
NAMA	National Media and Arts Association
NHSP	Health Strategic Plan
PLEED	Program for Legal Empowerment and Enhanced Justice Delivery
UN	United Nations
ZLDC	Zambia Law Development Commission

I. Part One

Introduction

Responses by the State Party to Recommendations raised by the Committee on the Elimination of All Forms of Racial Discrimination

1. Zambia is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). As a State Party to the ICERD, Zambia is obliged to report periodically on the implementation of the provisions of the Convention by responding to the recommendations of the Committee on the Elimination of Racial Discrimination and by indicating administrative, judicial and legislative measures that the State party has undertaken to prevent and eliminate racial discrimination. Zambia, presented its Sixteenth Periodic Report to the Committee in 2007 and the Committee raised various concerns and recommendations following its presentation.

2. Generally, the State party notes the general concluding observations under paragraph 1 to 8 which acknowledged the positive aspects highlighted in the State party's sixteenth periodic report. The State party further notes the recommendations made under paragraph 9 of the concluding observations which include the need to:

(a) Harmonise the State party's domestic law with ICERD in a timely manner; and

(b) Raise awareness of the public of the State party's international obligations under ICERD.

3. The State party's specific Reponses to each concluding observations by the Committee are indicated below.

1. Article 23 of the Constitution

Concluding Observation

4. **The Committee recommended in paragraph 9 of its Concluding Observations that Zambia facilitates the constitutional review process and amend article 23 (4) of the Constitution so as to ensure the full implementation of the prohibition of racial discrimination.**

Response

5. The State party wishes to report that Zambia did facilitate the Constitutional Review but did not amend Article 23 (4) as this could only be done through a referendum. The State Party wishes to further report that a referendum was conducted in August, 2016 but it was unsuccessful and as such, Article 23 (4) did not be reviewed and thus remains unchanged. The State party wishes to further report that it is exploring ways of evaluating the human rights without necessarily going to a referendum.

2. Existing Legislation on the right not to be discriminated against

Concluding Observation

6. **The Committee recommended that Zambia guarantee the right of everyone not to be discriminated against in the enjoyment of civil, political, economic, social, and cultural rights and requested that Zambia provide more detailed information on the existing legislation and its practical implementation.**

Response

7. The State party wishes to report that there are sufficient legal provisions that cover the recommendation of the Committee. Article 4(3) of the Zambian Constitution provides that:

"the Republic is a unitary, indivisible, multi-ethnic, multi-racial, multi-religious multi-cultural and multi-party democratic state".

8. The State party wishes to report that it upholds the right of everyone not to be discriminated against in the enjoyment of civil, political, economic, social, and cultural rights. Article 11 of the Zambian Constitution recognises and declares that every person in Zambia is entitled to the fundamental rights and freedoms of the individual irrespective of their race, place of origin, political opinions, colour, creed, sex or marital status. The Article also prohibits the enactment of a law that makes any provision that is discriminatory either of itself or in its effect and declares that a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

9. Further, under the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, an employer is prohibited from terminating the services of an employee on the ground of race. Section 108 of the Act provides that:

"No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee".

10. Furthermore, Section 70 of the Penal Code, Chapter 87 of the Laws of Zambia criminalises racial discrimination and a person guilty of the offence is liable, on conviction, to a period not exceeding two years. The said section provides as hereunder:

"Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to a period not exceeding two years".

3. Presidential Candidate

Concluding Observation

11. **The Committee, in paragraph 12 of its Concluding Observations noted the 1996 amendment to the Constitution, which requires that a presidential candidate be a second-generation Zambian and recommended that Zambia reviews this provision so as to ensure full compliance with Article 5 (c) of the Convention.**

Response

12. The State party wishes to report that it has under Article 100 of the Zambian Constitution reviewed the provision relating to qualifications of a person to stand as a presidential candidate to ensure full compliance with Article 5 (c) of the Convention. The said Article provides that:

"A person qualifies to be nominated as a candidate for election as President if that person:

(a) Is a citizen by birth or descent;

(b) Has been ordinarily resident in Zambia;

(c) Is at least thirty-five years old; and

(d) Is a registered voter".

4. Roy Clarke v. Attorney-General

Concluding Observation

13. **The Committee noted the decision of the State party to appeal the High Court judgement in the case of Roy Clarke v. Attorney-General and requested that the State party provide the Committee with detailed information on the results of the above-mentioned appeal.**

Response

14. The Committee may wish to note that the Supreme Court upheld the quashing of the Order of Deportation in the case of The Attorney General v Roy Clarke (2008). The Supreme Court stated:

> "we have found that on the facts of this case and the authorities we have cited, the deportation of the respondent was disproportionate and is for this reason that we dismissed the appeal".

5. Refugees

Concluding Observation

15. **The Committee in paragraph 14 of its Concluding Observations encouraged Zambia to review its refugee policy with a view to enhancing prospects for local integration of long-term refugees and to this end recommended that Zambia review the Refugee Control Act and considers withdrawing its reservation to the 1951 Convention relating to the Status of Refugees.**

Response

Review of refugee policy and relevant legislation

16. The State party wishes to report that the Refugee Control Act of 1970 was repealed and replaced by the Refugee Act No. 1 of 2017 which has domesticated the United Nations Convention relating to Status of Refugees, 1951 and it's Protocol of 1967. The new Refugees Act under section 20 (1) invokes the cessation clause under Article 1 (c) (5) of the 1951 UN Convention relating to the status of Refugees.

17. On the issue of local integration, the State party reports that from 2003 to date, approximately 190,000 Angolan refugees have voluntarily repatriated to Angola, leaving approximately 23,000 Angolan refugees on the Zambian territory. The number of Angolan refugee's still awaiting repatriation is 8,000. Out of the remaining 15,000 refugees, 905 were issued with resident permits that is:

- Those that were born in Zambia to parents who are both Angolan;
- Those that were born in Zambia to one parent who is a Zambian by virtue of Article 35(1) as read together with the Citizenship of Zambia Act No. 33 2016; and
- Those that have lived in Zambia for periods of between 30 and 45 years.

18. Local integration for the aforementioned refugees in (a) and (c) will be handled in accordance with the Immigration and Deportation Act of 2010, whilst the refugees under (b) are adequately provided for under Article 39 of the Constitution. The remaining 14, 095 have applied to be issued with resident permits and are awaiting for the applications to be scrutinized.

19. With regard to the Rwandan caseload, there is currently an exercise under which Rwandan refugees who wish to be exempt from the cessation clause are availed the opportunity to be so exempted. Refugees who have acquired their national passports are encouraged to avail themselves to existing procedures for acquisition of alternative status as provided under the Immigration and Deportation Act. In this regard, the aspect of local integration is sufficiently catered for and to that effect 30 Rwandan Refugees have been issued with resident permits.

20. With respect to consideration of withdrawal of reservations, the State party has made reservations to Articles 17, 22, 26 and 28 of the 1951 Convention. These reservations have been made in national interest such as security and protection of the State party's developing economy. The Committee may wish to note that the State party will consider the possibility of withdrawing the reservations after considering the report of an independent study to be conducted by UNHCR. The conclusion of the study will assist in determining the State party's position with regard to the withdrawal of its reservations to the Convention.

6. *De facto* Racial Discrimination by Non-State Actors

Concluding Observation

21. **The Committee noted that *de facto* racial discrimination by non-State actors poses daily challenges to the State party (Articles 4 and 5) and in this regard, urged Zambia to develop strategies to tackle this issue, in cooperation with the Zambian Human Rights Commission and other stakeholders.**

Response

22. The Committee may wish to note that the State party has domestic legislation that encompasses measures aimed at deterring *de facto* racial discrimination by non-state actors. The Immigration and Deportation Act No. 18 of 2010 provides in section 5(3) (e) and (f) that:

> The Director-General of Immigration shall, in carrying out the functions of the Department, as specified under subsection (1):
>
> (e) in consultation with the Commissioner for Refugees and any other relevant body, educate communities and organs of civil society on the rights of foreigners and refugees;
>
> (f) organise and participate in community fora or other community based organisations to deter xenophobia and educate the citizenry on migration issues.

23. The State party wishes to report that in 2015 the Human Rights Commission developed the Anti-Torture campaign strategic plan which emphasised the principle of non discrimination. Also, the Human Rights Commission employed the Communication Strategy whose goal was to have increased knowledge and awareness about Human Rights in Zambia through communication and information sharing. The Zambia Law Development Commission in collaboration with the Human Rights Commission have prepared an initial draft of the Anti-Torture Bill which has been subjected to stakeholder consultative process before ena tment.

24. Further, the State party wishes to report that various measures were put in place by the Human Rights Commission based on its broad mandate that provides for public education and awareness. This has been part of the Human Rights Commission strategic plan for the year 2014-2016.

25. Furthermore, prior to the referendum held in August 2016 to amend the Bill of Rights, the State party embarked on a nationwide sensitisation on the current provisions of the Bill of Rights which enshrines the protection against racial discrimination.

7. Recognize participation in organizations promoting and inciting racial discrimination as a punishable offence

Concluding Observation

26. **The Committee expressed concern that the provisions of article 4 (b) of the Convention have not yet been fully incorporated in domestic law and recommends that Zambia recognize participation in organizations promoting and inciting racial discrimination as a punishable offence.**

Response

27. The State party wishes to report that Articles 4, 11 and 23 (3) of the Zambian Constitution promotes the enjoyment of fundamental rights and freedoms with racial discrimination. Article 11 provides that:

> "It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status".

Article 23 (3) defines discrimination as:

> "In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description".

28. Furthermore, the State party wishes to report that promoting and inciting racial discrimination is a punishable offence under section. 70 of the Penal Code. Section 70 provides that:

> "Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to a period not exceeding two years".

29. The Committee may wish to note that participating, promoting or inciting racial discrimination by any organisation is considered a criminal offence under the law.

8. Statistical Information on Complaints of Racial Discrimination

Concluding Observation

30. **In paragraph 17 of its Concluding Observations, the Committee requested that Zambia should include in its next periodic report statistical information on complaints of racial discrimination lodged before national courts and the Zambian Human Rights Commission, as well as on the outcome of these cases.**

Response

A. National Courts

31. The State party wishes to state that no complaints of racial discrimination have been brought before the courts. Consequently, there is no statistical information on complaints of racial discrimination to include in the report.

B. Human Rights Commission

32. The State party wishes to report that since the last report in 2007, the Human Rights Commission received one complaint of racial discrimination involving a Muslim who was expelled from the Islamic Committee on account of being black. The case is still under investigation. Other cases received by the Commission mostly related to discrimination are based on ethnic origin emanating from some chiefdoms of the State party.

C. Racial discrimination cases lodged with other Institutions

33. The State party wishes to report that during the period 2007 to 2017, the Ministry responsible for labour and social security received 6 cases of racial discrimination which involved the use of derogatory language and victimisation. Investigations were conducted and after finding the companies guilty of discrimination, appropriate action was taken as follows:

(i) Southern Sun Hotel – in this case, the Zambian Employees Complained of the use of abusive language against them by the expatriates, they also complained of having a lower salary scale from the foreigners and they also complained of being treated less favourably compared to the foreigners. The company was cautioned;

(ii) Mundawanga Botanical Gardens – in this case, the Zambian Employees Complained of the use of abusive language against them by the expatriates, they also complained of being treated less favourably compared to the foreigners. The company was cautioned;

(iii) Kansanshi Mining PLC – in this case, the Zambian Employees Complained of the use of abusive language against them by the expatriates, they also complained of having a lower salary scale from the foreigners and they also complained of being treated less favourably compared to the foreigners. Investigations revealed that the allegations were false;

(iv) Zambezi Portland Cement – in this case, the Zambian Employees Complained of the use of abusive language against them by the one expatriate. The subject was deported;

(v) Allied Mobile – in this case, the Zambian Employees Complained of the use of abusive language against them by one expatriate, they also complained of being treated less favourably compared to the foreigners. The company was cautioned, the subject apologised, resigned from employment and left the country; and

(vi) Horse Shoe Restaurant – in this case, the Zambian Employees Complained of being mistreated by the expatriates and also complained the use of abusive language against them by the expatriates, they also complained of being overworked and not being paid overtime. There was also a complaint of violation of Zambia Labour Laws by the expatriates. The Company was cautioned.

9. Human Rights Awareness

Concluding Observations

34. **The Committee in paragraph 19 of its Concluding Observations expressed concern that most people living in Zambia are not aware of their rights and thus find it difficult to seek redress if their rights are violated and in this regard, recommended that Zambia should strengthen its efforts to raise the awareness of people on their rights, inform the victims of all remedies available to them, facilitate their access to justice, and train judges, lawyers, and law enforcement personnel accordingly.**

Response

35. The State party wishes to report that it has put in place measures aimed at raising the awareness levels of people regarding their rights. The Committee may wish to note that in addition to the human rights awareness programmes conducted by the Human Rights Commission, other Government institutions also conduct human rights awareness programmes in conjunction with local Non-Governmental Organisations Faith-Based Organisations, Civil Society Organisations, Parliament Committee on Human Rights and other State Actors.

36. The State party wishes to report that there has been sensitisation to traditional leaders and selected members of the Community which was aimed at raising awareness among local leaders on forms of gender-based violence and human rights so as to enhance understanding among traditional leaders and the community.

37. The State party wishes to report that the Judiciary does hold annual Conferences for Judges which among other things deal with the issues of Human Rights.

38. The Human Rights Commission in 2015 invited Law Enforcement Agencies to sensitise them on the need to uphold human rights ahead of the tripartite elections. A two-day workshop was also held with the Correctional Services to sensitise them on the right of inmates to participate in elections. The Human Rights Commission within the same year revised the Election Handbook. Further, 13 Television programmes prior to elections were

conducted to sensitise the public on human rights. Following the Constitution Amendment, Act No. 2 of 2016, Article 46 of the Constitution Amendment No. 2 of 2016 extended the rights to inmates to vote in an election.

10. Some of the reforms adopted by the State party to enhance awareness of human rights and provide access to justice are indicated below

A. Commissioning of the Legal and Justice Sector Reforms

39. The State party wishes to report that in 2014 it commissioned the Legal and Justice Sector Reforms Commission to undertake a comprehensive public inquiry into the state of the Legal and Justice Sector in Zambia and recommend appropriate reform measures.

B. Decentralisation of Legal Aid Board offices to more districts and provinces

40. The Legal Aid Board which provides legal aid services to the indigent was decentralised to all the ten (10) provinces of Zambia.

C. Education curriculum for secondary schools

41. The education curriculum for secondary schools was revised to include civic education. This was meant to mainstream the teaching of civic rights to learners in their core school curriculum. Civic education is now taught at all levels from primary to tertiary education. This has enhanced awareness of civic rights amongst the learners and the public in general.

D. Opening of Legal Services Units

42. The Government working in collaboration with stakeholders opened five Legal Services Units at the courts in 2017. So far, the Legal Service Units are present at the Choma Magistrate Court, Lusaka Magistrate Court, Kitwe Magistrate Court, Chingola Magistrate Court and in North Western province. The programme is being spearheaded by Ministry of Justice with support from GIZ. Plans are yet to be implemented to also set up Legal Service Units at, correctional facilities and the police stations. This is programme is on-going and will see more legal services units been opened. This will enhance access to legal services by the indigent.

E. Sensitisation

43. Government scaled up public sensitisation by printing and distribution of information, and education materials on bail and police bond application procedures.

F. Creation of Social Protection Units and appointment of gender focal point persons in all the 110 districts

44. The Government also facilitated the creation of Social Protection Units and appointment of Gender Focal Points in all districts within the Police Service. The Units interfaces with the community to sensitize them on their rights with regard to Gender Based Violence and offer them available options for redress.

11. Effectiveness of Human Rights Commission

Concluding Observation

45. **The Committee in paragraph 20 of its Concluding Observations recommended that the State party increase its efforts to enhance the effectiveness of the Human Rights Commission, in particular through adequate budget allocations and requested that detailed information about the follow-up by the State authorities to the Commission's recommendations, as well as on relationships established between the Commission and civil society.**

Response

46. The State party wishes to report that Section 22 (2) of the Human Rights Commission Act provides that "the Commission may, subject to approval of the President, accept any money by way of grants or donations from any source and raise, by way of loans or otherwise, such money as it may require for the discharge of its functions." Given this, the Human Rights Commission is able to seek and receive funds from international institutions or any other source as it deems appropriate.

47. The State party also wishes to report that the Human Rights Commission Act provides for the functions and powers of the Human Rights Commission and its composition. The State party confirms that the provisions of the Act are in full compliance with the Paris Principles. For instance, section 3 of the Human Rights Commission Act provides that 'the Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority'. Further, the Commission has the discretion to develop its own rules to govern its operations.

12. Durban Declaration and Programme of Action

Concluding Observation

48. **In paragraph 21 of its Concluding Observations, the Committee recommended that Zambia take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

Response

49. The State party wishes to report that isolated incidents of intolerance have occurred on its territory and these have been ably handled by law enforcement officers.

50. The Committee may wish to take note that the State party's policies on migration are not based on racism, racial discrimination, xenophobia or related intolerance.

51. Further, the Committee is invited to note that the State party has legislation that encompasses the principles of the Durban Declaration such as section 5(3) (e) and (f) of the Immigration and Deportation Act No. 18 of 2010 which seeks to deter de factor racial discrimination.

52. Furthermore, section 48 (1) of the said Act seeks to prevent instances of xenophobia on the part of immigration officers employed in the Immigration Department. The section provides, in part, that:

> "The Department shall set up an immigration integrity committee charged with the task of preventing, deterring, detecting and exposing any instance of ... xenophobia ... by a person employed in the Department".

53. The State party also wishes to report that the Immigration Department, under the Ministry of Home affairs has an integrity committee which is tasked with hearing and investigating racial discrimination complaints. Disciplinary measures are meted out on erring officers. Further, the committee holds workshops to sensitise its officers on issues bordering on racial discrimination.

13. Amendments to Article 8 of the Convention

Concluding Observation

54. **The Committee recommended that the State party ratify the amendments to article 8, paragraph 6, of the Convention.**

Response

55. The State party reports that it is yet to ratify the amendment to Article 8 paragraph 6 of the Convention. The State party wishes to state that it remains committed to the work of the Committee and pledges support for its nationals appointed to serve on the Committee.

II. Part Two
Information on Specific Articles of the Convention

56. The State party is required to indicate any updated legislative, judicial, administrative or other measures which have been put in place with the provisions of the Convention. The State party wishes to report on the implementation of Articles 1 to 7 hereunder.

Article 1

14. Assessment of the compliance of the definition of racial discrimination in domestic law

57. The State party wishes to report that its domestic law does not provide a specific definition of racial discrimination but a general definition of discrimination which encompasses discrimination based on race, colour, descent and national or ethnic origin under Article 23(3).

A. Legislative Measures

58. The expression "discriminatory" is defined under Article 23 (3) of the Constitution to mean affording different treatment to different persons attributable, wholly or mainly to their respective description by race, trade, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

59. Article 23 of the Constitution prohibits a law from making a provision that is discriminatory either of itself or in its effect. It is the state party's view that prohibition of a law that is discriminatory in itself relates to direct discrimination while prohibition of a law that is discriminatory in its effect relates to indirect discrimination.

B. Administrative Measures

60. No measures to report on.

C. Judicial measures

61. No measures to report on.

D. Reservations, declarations, derogations, restrictions or limitations

62. The Committee may wish to note that the State party has not entered any reservations and declarations, derogations, restrictions or limitations regarding the scope of the definition of racial discrimination.

15. Extent to which domestic law provides for differential treatment based on citizenship or immigration

A. Legislative Measures

63. Article 22 of the Zambian Constitution guarantees freedom of movement. However, under Article 22(3) (b) of the Zambian Constitution, nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Article 22 to

the extent that it is shown that the law in question makes provision for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia.

64. The State party wishes to report that the State party does respect human rights but it has laws that offer differential treatment on basis of citizenship or immigration so as to empower Zambians. For Instance, the Citizen Economic Empowerment Act, 2006 (the Act) under section 3 provides that a citizen is defined as citizen of Zambia. Further, the Act also provides under the same section that twenty-five to fifty percent of a company's equity shall be owned by citizens. It also defines "citizen influenced company" as a company where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company. It goes on further to define a "citizen owned company" as a company where at least fifty point one percent of it equity is owned by citizens and in which citizens have significant control of the management of the company. Under under section 13, the Act stipulates that the commission shall make economic empowerment measures that will be meant for citizens and citizen owned companies.

65. Furthermore, the State party wishes to report that under the Zambia Development Agency Act No.11 of 2006, section 38 provides for the purchase of shares by citizens of Zambia. It provides as follows:

"The following shall apply to citizens of Zambia:

(i) Shares or assets may be offered at a discount to persons who purchase a small number of shares or a few assets;

(ii) A share bonus shall be given at the end of a prescribed period to small shareholders who hold onto shares;

(iii) Individuals, management and employees of the State owned enterprise may pay for shares or assets in instalments; or

(iv) Individuals may participate in the acquisition of shares or assets which have been transferred in a State owned enterprise to a Privatisation Trust Account opened under section fifty-two".

Article 2

16. Brief description of the legal framework and general policies to eliminate racial discrimination

A. Legislative measures

66. There are no new measures to report on.

B. Administrative measures

67. The Committee is invited to note that the Immigration Department in the Ministry of Home Affairs has set up an integrity committee charged with the task of preventing, deterring, detecting and exposing any instance of racial discrimination.

C. Judicial measures

68. The State party states that there are no new measures to report on.

17. To give effect to the undertaking to:

(i) Engage in no act or practice of racial discrimination against persons, groups of persons or institutions;

(ii) Prohibit and bring to an end racial discrimination by any persons, groups or organisations; and

(iii) Not to sponsor, defend or support racial discrimination by any persons or organisations.

A. Legislative measures

69. The State party wishes to report that engaging in racial discrimination is a punishable offence under S. 70 of the Penal Code. Section 70 provides that:

> "Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to a period not exceeding two years".

B. Administrative Measures

70. There are no new measures to report on.

C. Judicial Measures

71. There are no new measures to report on.

Article 3

18. Measures to prevent Racial Segregation

A. Legislative Measures

72. The State party wishes to report that racial segregation or apartheid is not practiced on its territory. The Constitution makes it clear under Article 4(3) of the Constitution that Zambia is a unitary state. Further, as earlier stated the State party prohibits discrimination in Articles 11 to 26 of the Constitution and has in place adequate measures to address such a situation should it arise.

The Education Act No. 23 of 2011

73. The Education Act, 2011 guarantees the right to free basic education of every child. Section 15 provides that:

> "A child has the right to free basic education".

74. Although the section is silent regarding the ethnic origin, race or tribe of the "child" to whom the section applies, it is evident from the definition of "child" set out in section 2 of the Act. In that section, "child" is defined as "a person who has not attained the age of sixteen years". Person, in this context, is not defined by ethnic origin, race or tribe, but rather by age.

75. The non- discriminatory character of the right to free basic education is further manifested in section 19 of the Act which provides:

> "An educational institution shall not discriminate against a learner in any manner".

76. The State party wishes to state further that access to basic education is provided to refugee children and non-citizens and this right is protected by the Act.

B. Administrative measures

77. The Human Rights Commission has a broad mandate to hear and investigate complaints of human rights abuse.

C. Judicial Measures

78. There are no measures to report on.

Article 4

19. Measures to eradicate propaganda, incitement to or acts of racial discrimination

79. The State party reiterates its commitment to the prohibition of all acts intended to incite racial discrimination as well as all acts of racial discrimination in violation of the Universal Declaration of Human Rights and the Convention.

A. Legislative Measures

80. The State party wishes to report that there was an enactment of the Immigration and Deportation Act of 2010.

> Section 48 (1) of the Immigration and Deportation Act, 2010, prohibits xenophobia by public officers employed in the Immigration Department and an integrity committee has been set up.

81. This provision clearly seeks to prevent instances of xenophobia on the part of immigration officers.

82. Furthermore, the State party wishes to report that promoting and inciting racial discrimination is a punishable offence under S. 70 of the Penal Code. Section 70 provides that:

> "Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to a period not exceeding two years".

B. Judicial Measures

83. There are no measures to report on.

C. Administrative Measures

84. There are no measures to report on.

20. Information on whether racial motives are considered an aggravating circumstance under domestic penal legislation

A. Legislative Measure

85. The State party wishes to report that racial discrimination is a punishable offence under S. 70 of the Penal Code. Section 70 provides that:

> "Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to a period not exceeding two years".

B. Judicial Measures

86. There are no measures to report on.

C. Administrative Measures

87. There are no measures to report on.

Article 5

21. Implementation of Rights and Freedoms

A. Legislative Measures

88. The Committee is invited to note that Article 11 of the Constitution of Zambia referred to earlier, is the legal basis upon which every person in Zambia whatever the person's race, place of origin, political opinions, colour, creed, sex or marital status is entitled, subject to the necessary limitations, to the fundamental rights and freedoms. This Constitutional provision is the first step in ensuring that individuals are not subjected to racial discrimination.

89. Article 13(1) of the Constitution prohibits the deprivation of a person's personal liberty except in specified circumstances, which circumstances do not relate to discrimination on the basis of race or colour.

90. With regard to protection against violence and bodily harm, Article 15 of the Constitution prohibits the subjection of a person to torture or inhuman or degrading punishment or other like treatment. This prohibition is without exception under any circumstance.

91. Article 18 of the Constitution of Zambia provides that any person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

92. Further, the State party wishes to report that any law establishing tribunals and all other organs administering justice must be consistent with Article 23 of the Constitution which prohibits discriminatory treatment.

93. Article 28 of the Constitution. The latter expressly provides for a judicial remedy for the violation of any of the rights and freedoms guaranteed in the Constitution.

94. The Committee's attention is drawn to Article 45 and 46 of the Constitution Amendment Act No. 2 of 2016 which guarantees the right to vote or the franchise. Article 45 provides that:

> "(1) Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by parliament from registration as a voter for the purposes of elections to the national assembly, be entitled to be registered as such voter under a law in that behalf, and no other person may be so registered".

95. The State party wishes to report that sections 229, 247, 248 and 248A of the Penal Code adequately provide for punishments to offences against bodily harm.

> 229. "Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years."
>
> 227. "Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year."
>
> 248. "Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years. Assaults occasioning actual bodily harm."
>
> 248A. "Any person who commits an assault or battery on a child occasioning actual bodily harm commits an offence and is liable, upon conviction, to a term of imprisonment of not less than five years and not exceeding ten years."

B. Judicial measures

96. There are no new measures to report on.

C. Administrative measures

97. The Committee is invited to note that the State party has established the Human Rights Commission whose mandate include inter alia, investigation of claims of discrimination. The Human Rights Commission also ensures that claims made against public officials, notably those concerning discriminatory or racist behaviour, are subject to effective scrutiny. Furthermore, under Article 230(3) (b) of the Constitution of Zambia, The Human Rights Commission is mandated to take necessary steps to secure appropriate redress where rights and freedoms are violated.

98. The State party wishes to report that the Ministry of Home Affairs under the department of the Zambia Police Service-Mobile and Protective Unit and Operations at Divisional and District Level are mandated to provide quick responses to riotous behaviour. The Zambia Police Service has a Code of Ethics to deal with issues of discrimination.

99. The State Party also wishes to report the establishment of the Police Public Complaints Commission which is aimed at ensuring that any abuse of power by the police is reported to the Commission and the Commission will then carry out the investigation and deal with the matter accordingly depending on the outcome of the investigation.

100. The State party wishes to report that in ensuring the right to public health and medical care, it has developed several policies and strategies for specific aspects of health in order to improve health care services.

101. The State party has developed the National Health Strategic Plan (NHSP) which covers five (5) years from 2017-2021. The NHSP provides guidance on all health interventions in the health sector. It details the direction the health sector will take, the achievements and outcomes that will be attained, and the interventions that will be undertaken to make sure these targets are met. The NHSP also specifies the roles and responsibilities that all actors involved in the health sector will have to perform, the implementation challenges that have to be overcome, the Monitoring and evaluation required, and the financial resources needed to enable the plan to be successfully implemented.

102. Further, the Committee is invited to note that the State party has developed the National Health Policy. This underscores Government's commitment to the provision of equitable access to cost effective and quality health services as close to the family as possible in a caring, competent and clean environment. As a result of this policy, the Government will prioritise among other programmes, Primary Health Services, hospital referral services, human resource development and management, medical and logistics, infrastructure development, legal framework and health care financing.

103. The State party wishes to report that from 2012 to date. The Government through the Ministry of Health has built 40 hospitals. The Hospitals have been built in every Province of the Country to ensure that health care services are improved.

104. During the period under review, the State party has constructed and upgraded some clinics to first level hospitals. A total of 24 health facilities were constructed in all the 10 provinces. The service also constructed and operationalised four mini hospitals at the following Correctional Facilities; - Livingstone Central, Chipata, Kabwe Medium and Lusaka Central. The said four mini hospitals have well established laboratories for TB Screening, HIV testing, CD 4 count, Chemical analyzer among other things.

105. In addition the Government has constructed a modern hospital at Mwembeshi Correctional facility. The efforts by the Correctional Service through the provision of professional health care services, hygienic sanitary and adequate water reticulation and other basic life requisites are all aimed at improving the living conditions of all inmates in these places of detention and there by upholding their human rights.

22. Other civil rights [article 5 (d) (i) to (ix)]

106. No new measure in place.

23. Economic, Social and Cultural Rights

107. The State party wishes to report that its domestic legislation does not expressly guarantee economic, social and cultural rights. An attempt was made to incorporate economic, social and cultural rights under the Bill of Rights through the Referendum conducted in August, 2016, which failed. However, under the Directive Principles of State Policy, the State party has undertaken to provide access to such rights progressively depending on the availability of financial resources.

Article 6

24. Effective Remedy through Tribunals and Other State Organs

A. Legislative Measures

108. Articles 11 to 26 of the Constitution give protection of human rights whereas Article 28 opens the courts to people seeking redress.

109. The Legal Aid Act, Chapter 34 of the Laws of Zambia was amended by Legal Aid (Amendment) No. 19 of 2005 to establish an independent Legal Aid Board to assist litigants and accused persons whose resources are not adequate to secure appropriate legal representation in the courts of law.

B. Judicial Measures

110. The State party wishes to report that the Supreme Court, Constitutional Court and High Court do provide adequate remedy of infringement of any human rights.

C. Administrative Measures

111. In order to ensure efficiency, the Legal Aid Board has offices in ten (10) provinces of the country. There is the Legal Services Unit (LSU) being pioneered by the Program for Legal Empowerment and Enhanced Justice program that has seen the establishment of offices at the Subordinate Courts. The presence of this program is currently registered in the following towns:

(i) Livingstone - 2 Legal Aid Assistants;

(ii) Choma – 3 Legal Aid Assistants;

(iii) Kitwe - 2 Legal Aid Assistants;

(iv) Lusaka – 10 Legal Aid Assistants;

(v) Chingola - 2 Legal Aid Assistants; and

(vi) Ndola – 1 Legal Aid Assistant with recruitment underway for 2.

The LSU also grants assistance to districts that do not have the LSU.

112. Efforts are under way to improve on the delivery of legal aid through the 'Access to Justice Program'. Access to Justice is an inter-institutional program aimed at improving access to justice for poor people by taking a holistic approach and bringing together key criminal justice institutions-namely, Zambia Police, Legal Aid Board, the National Prosecution Authority, the Judiciary and Prisons Service together for problem solving and planning.

25. Human Rights Commission

113. The State party wishes to report that the Human Rights Commission is mandated to receive and investigate complaints involving abuse of human rights, including racial discrimination.

26. Racial discrimination cases lodged with other Institutions

114. The State party wishes to report that during the period 2011 to 2017, the Ministry responsible for labour and social security received 6 cases of use of abusive language and victimisation based on race. The Committee is invited to refer to Part I of this report (responses to concluding observations) for more information.

Article 7

27. Measures to combat prejudices that lead to racial discrimination

115. The State party wishes to state that it has put in place several measures to raise awareness of discrimination, particularly on the ground of race and on human rights values in general. The enactment of laws has also contributed greatly to combating prejudices that lead to racial discrimination.

A. Legislative Measures

116. The State party upholds a person's right to freedom of conscience, belief or religion. People are free to practice their respective cultures. Article 19 (1) of the constitution further provides that:

> "Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance".

117. The State party wishes to report that the Education Act No. 23 of 2011 was enacted in order to eliminate discrimination in the access of education opportunities.

B. Judicial Measures

118. There are no new measures to report on.

C. Administrative Measures

119. There are no measures to report on.

28. Education and Teaching

120. The State party has in place a policy on education whose main objective is to guide the provision of education that promotes democratic ideals, where people accept and value other persons on the basis of their personal worth and dignity, irrespective of ethnic origin or any other status.

29. Information and Broadcasting

121. The State party wishes to report that the Ministry responsible for information and broadcasting has undertaken a number of sensitization workshops among media personnel aimed at encouraging professionalism, and discouraging stereotyping in reporting cases of

racial discrimination. Additionally, the State party has allowed the media to come up with a self-regulatory framework guided by its own code of conduct.

122. The State party also wishes to report that there are radio stations which are also responsible for sensitizing the public on human rights.

30. Culture

123. The State party remains committed to supporting culture and traditional ceremonies across the country to promote the cultural identity of the various tribal groups.

124. The Committee may wish to note that the State party provides financial support to institutions and associations promoting the protection of cultural identity through such organisations as the National Media and Arts Association (NAMA).

31. Conclusion

125. In conclusion, the State party shall continue to put its efforts into action and cooperate with the United Nations and Member States in order to ensure that all forms of racial discrimination are effectively eliminated.

Annexes

Legislation

The following are excerpts from the various pieces of legislation referred to in the State party report:

1. The Constitution of Zambia, Act No. 2 of 2016;
2. Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia;
3. Penal Code, Chapter 87 of the Laws of Zambia;
4. Refugees Act No. 1 of 2017;
5. Citizenship of Zambia Act No. 33 of 2016;
6. Immigration and Deportation Act No 18 of 2010;
7. Human Rights Commission Act, Chapter 48 of the Laws of Zambia;
8. Citizen Economic Empowerment Act 2006;
9. Zambia Development Agency Act No.11 of 2006;
10. Education Act No. 23 of 2011;
11. Legal Aid (Amendment) Act No. 19 of 2005.

Policies, Guidelines and Standards

1. National Health Policy, 2017;
2. National Health Strategic Plan, 2017.